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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Gary Singleton,  
Plaintiff,  
vs.  
Jupiter Communities, LLC,  
Defendant

Case No.: 2:12-cv-2056-JAD-PAL

**Order Granting Motion to Strike  
Statement of Non-Opposition and  
Referring Motion to Compel to  
Magistrate Judge [Doc. 44]**

20 Plaintiff Gary Singleton has filed this employment action against his former employer,  
21 Jupiter Communities. Doc. 1. On September 25, 2013, Jupiter moved for Summary  
22 Judgment, Doc. 38, within the period specified in the Court's Scheduling Order. Doc. 17.  
23 On September 30, 2013, U.S. Magistrate Judge Leen issued an Order on a discovery matter,  
24 Doc. 39, which extended the dispositive motions deadline to December 5, 2013. Doc. 39 at  
25 9.

26 By October 23, 2013, no response to Jupiter’s motion had been filed, and Jupiter filed  
27 a notice of non-opposition. Doc. 43. On October 31, 2013, Plaintiff Singleton, who is  
28 represented by counsel, filed a combined “motion to strike” and a “motion to compel,” in

1 which he seeks an order setting aside the motion for summary judgment under the belief that  
 2 such a motion should have been filed between November 7, 2013, and December 5, 2013.  
 3 Doc. 44.<sup>1</sup> On December 1, 2013, Singleton filed a response to Jupiter's motion for summary  
 4 judgment. Doc. 48.

## 5 Discussion

6 "Unless . . . the Court orders otherwise, a party may file a motion for summary  
 7 judgment at any time until 30 days after the close of all discovery." Fed. R. Civ. Proc. 56(b).  
 8 Under Local Rule 7-2(e), "The time for filing a motion of summary judgment shall be  
 9 governed by Federal Rules of Civil Procedure 56(b). A party opposing the motion must file  
 10 a response within twenty-one (21) days after the motion is served or a responsive pleading is  
 11 due, whichever is later." Moreover, under Local Rule 7-2(d), "[t]he failure of an opposing  
 12 party to file points and authorities in response to any motion shall constitute a consent to the  
 13 granting of the motion." However, the failure to file an opposition to a summary judgment  
 14 motion does not permit a trial court to grant the motion by default, even if a local rule may so  
 15 provide. *Heinemann v. Satterberg*, 731 F.3d 914, 916 (9th Cir. 2013).

16 According to the certificate of service attached to Jupiter's Motion for Summary  
 17 Judgment, the motion was served on Singleton's counsel via U.S. Mail on September 25,  
 18 2013. Doc. 38 at 23. Excluding the day triggering the period under Rule 6(a)(1)(A), adding  
 19 three days to the service period under Rules 6(d) and 5(b)(2)(C), and carrying over the period  
 20 through an intervening weekend under Rule 6(a)(1)(C), Singleton's response was due no  
 21 later than Monday, October 21, 2013.<sup>2</sup> Singleton filed his "motion to strike" on October 31,  
 22 2013—eight days after Jupiter filed its notice of non-opposition. Singleton ultimately filed a  
 23 "response" to the motion for summary judgment on December 1, 2013. Doc. 48. He has not  
 24 asked for any relief from the response deadline that he missed by more than 30 days.

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 27 <sup>1</sup> Jupiter has filed a response, Doc. 45, and Singleton has filed a reply. Doc. 47.  
 28 <sup>2</sup> 24 days from October 26, 2013, was a Sunday, so Singleton had until Monday, October 31, 2013, to respond.

1        Aside from a throwaway reference to “the pleadings and papers on file herein,” the  
 2 sum total of Singleton’s reasoning in support of his late filings is as follows:

3        Defendant filed a Motion to Strike and Plaintiff filed an Opposition and  
 4 Counter-Motion. Instead of Defendant waiting for a decision on the motions;  
 5 Defendant filed their dispositive motion. Based on the Order filed by this  
 6 Honorable Court on September 30, 2013 the dispositive motion should not  
 7 have been filed until some time after November 7, 2013 and by December 5,  
 8 2013. Therefore, Plaintiff should have twenty-one (21) days in which to file  
 9 a response whenever Defendant chooses to file their dispositive motion.

10      Doc. 44 at 2 (formatting in original). Singleton later filed a reply, in which he argued:

11      Although the court has discretion when deciding motions to strike, striking a  
 12 pleading is disfavored. However, in this case, a Motion for Summary  
 13 Judgment and Non-Opposition, is not a pleading. The offending documents  
 14 should be stricken because Defendant should have waited until this  
 15 Honorable Court’s order. In addition, this Honorable Court gave a new date  
 16 for filing dispositive motions. Only a devil would proceed on and even file a  
 17 Non-Opposition.

18      Doc. 47 at 2 (citations omitted) (formatting and emphasis in original). Charitably speaking,  
 19 Singleton’s arguments are specious. Under the plain language of Rule 56, which Local Rule  
 20 7-2 explicitly adopts, Jupiter could elect to move for summary judgment at any time before  
 21 the deadline. Singleton never took the routine step of requesting more time to file his  
 22 response, and nothing in Magistrate Judge Leen’s September 30, 2013, Order indicates that  
 23 the extension of the summary judgment deadline operated to extend Singleton’s time for  
 24 response to Jupiter’s already-filed motion. Instead, Judge Leen’s Order provided an  
 25 extension of time by which discovery could be completed so that subsequent summary  
 26 judgment motions could be filed. *See* Doc. 39. This allowed Singleton additional time to  
 27 collect and present evidence in support of a counter-motion for summary judgment, which he  
 28 timely filed. Doc. 49.<sup>3</sup>

29        Nonetheless, because Singleton’s motion to strike is a plain, if clumsy, attempt to  
 30 avoid the consequences of failing to file an opposition, it is charitably construed as a motion  
 31 to extend the deadline for filing his opposition to Jupiter’s Motion for Summary Judgment.  
 32 And although ignorance of the law—particularly when a litigant is represented by

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30      <sup>3</sup> The motion to strike contains no authorities in violation of L.R. 7-2(a). This presents an independent  
 31 basis for denying this motion. L.R. 7-2(d).

1 counsel—is no excuse, this Court favors disposition of claims on their merits. Therefore, the  
 2 Court will grant Singleton’s Motion to Strike Jupiter’s Notice of Non-Opposition, and will  
 3 consider his December 1, 2013, response to Jupiter’s Motion for Summary Judgment. Docs.  
 4 38, 48. Jupiter shall have fourteen (14) days from this order to file any reply.<sup>4</sup>

5 The remainder of Singleton’s compound motion raises a discovery matter, which is  
 6 properly before Magistrate Judge Leen. The same is hereby referred to Magistrate Judge  
 7 Leen for adjudication.

8 **Conclusion**

9 Accordingly, based upon the foregoing reasons and with good cause appearing and no  
 10 reason for delay,

11 It is **HEREBY ORDERED** that Singleton’s Motion to Strike Summary Judgment;  
 12 Notice of Non-Opposition as Premature and Motion to Compel [Doc. 44] is **GRANTED** as  
 13 to his request to strike the Notice of Non-Opposition. The Notice of non-Opposition [Doc.  
 14 43] shall be stricken, and Jupiter shall have fourteen (14) days from the issuance of this order  
 15 to file any reply in support of its Motion for Summary Judgment.

16 It is **FURTHER ORDERED** that the remainder of the Motion pertaining to  
 17 Singleton’s Motion to Compel discovery is hereby referred to Magistrate Judge Peggy A.  
 18 Leen for adjudication.

19 DATED: January 9, 2014.

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 22 JENNIFER A. DORSEY  
 23 UNITED STATES DISTRICT JUDGE  
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27       <sup>4</sup> Singleton is also cautioned that the deadline extension in this Order pertains only to his response to  
 28 Jupiter’s Motion for Summary Judgment, Doc. 38, and the December 1, 2013, filing in response thereto. Doc.  
 48. No other case deadlines are extended by this order.